IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 10853 of 2007(P)

AGAINST THE ORDER IN IA 150/2007 IN
OS.161/2006 of MUNSIFF COURT, HOSDRUG

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PETITIONER:

K.PREETHAKUMARI, AGED 40 YEARS,
W/O.V.MUKUNDAN, CHERIYAMMA NIVAS,
KORICHAL, THIMRI POST AND VILLAGE,
KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.T.POULOSE (KORATTY)

RESPONDENTS:

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1. V.P.MADHAVI, AGED 65 YEARS,
W/O.LATE T.K.CHANDAN, RESIDING AT KOTTAMOOLA,
THIMRI P.O., (VIA) CHERUVATHUR, HOSDURGH TALUK,
KASARAGOD DISTRICT.

2. THE ASSISTANT EXECUTIVE ENGINEER,
110 KV SUB STATION, KANNADIPPARA,
CHERUVATHOOR, KASARAGOD DISTRICT.

3. THE CHIEF ENGINEER,
TRANMISSION CIRCLE, VYDHUTHI BHAVAN,
KANNUR.

4. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDHUTHI BHAVAN, THIRUVANANTHAPURAM.

BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint OS No.161/2006 of Munsiff Court, Hosdurg.

Ext.P2 true copy of the report dated 16.3.2006.

Ext.P3 true copy of the report dated 20.3.2006.

Ext.P4 true copy of the application IA 2593/2006 in OS 161/2006 dated 26.9.2006.

Ext.P5 true copy of the order IA 2593/06 in OS 161/2006 dated 25.11.2006.

Ext.P6 true copy of the application IA 150/2007 in OS 161/2006 dated 4.1.2006.

Ext.P7 true copy of the order IA 150/2007 in OS 161/06 dated 23.1.2007

M.N.Krishnan, J.

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W.P(C).No.10853 of 2007

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Dated this the 31st day of October, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the Munsiff, Hosdurg in I.A.No.150 of 2007 inO.S.No.161 of 2006. It is an application for amendment of the plaint whereby the plaintiff wants to seek a declaration that the order passed by the Additional District Magistrate on 25.5.2006 as null and void. The court after hearing both sides, allowed the prayer and aggrieved by the said decision, the defendants have preferred this Writ Petition.

2. Learned counsel for the writ petitioner had drawn my attention to the various documents produced in the case especially, Exts.P4 and P5. Ext.P4 was an application for amendment filed as I.A.No.2593 of 2006. A perusal of the said document would reveal that a prayer was incorporated as relief No.2 which almost reads as the same which is now sought to be introduced in the new amendment. By Ext.P5 order, learned Munsiff disposed of the amendment application holding that

major portion of the amendment is consequent to the filing of I.A.No.2592 of 2006. I am informed that the said application is one for impleadment and therefore the court disposed of I.A.No.2593 of 2006 as a consequence of the dismissal of the impleadment application. The court did not consider the question of amending the plaint in that application by applying its mind nor a considered order is passed so far as it relates to amendment. I am conscious of the fact that if an order is passed in an interlocutory stage, even in such cases, principles of res judicata will apply. But here is a case where the court has not passed an order on merits, but has superficially disposed of the amendment application.

3. So far as the amendment is concerned, the plaintiff wants to incorporate a prayer to declare the order of the Additional District Magistrate dated 25.5.2006 as void. Whether the plaintiff is entitled to challenge the order of the Additional District Magistrate passed exercising the jurisdiction under the statute is legal, sustainable or not is a matter that can be only considered in the suit and not before that and it is a settled principle that while considering the amendment application the

court shall not go deep into the merits or demerits of the case because it will ultimately cause prejudice to one of the parties. The right of the defendants to challenge the amended plaint will survive and he can file additional written statement and raise an issue regarding the non-maintainability of the suit to set aside an order passed by the Additional District Magistrate. So, none of the valid right which is accrued to the defendants is taken away by amending the plaint. The court below has found that the amendment is necessary to avoid multiplicity of proceedings as well.

4. So, I do not find any ground to interfere with the decision rendered by the court below and therefore it is confirmed and the Writ Petition is dismissed. Needless to say that the defendants are permitted to file additional written statement and also raise the question of law regarding the legality of having prayer to set aside the order of the Additional District Magistrate in a civil proceeding.

M.N.Krishnan,
Judge.

ess 31/10